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WRITTEN TESTIMONY OF

TONY M. EDWARDS
SENIOR EXECUTIVE VICE PRESIDENT
NAREIT

TO THE MARYLAND HOUSE WAYS & MEANS COMMITTEE
IN OPPOSITION TO THE REIT-RELATED PROVISIONS OF H.B. 337

MARCH 9, 2023

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Nareit Testimony in Opposition to the REIT-Related Provisions of H.B. 337

Chair Atterbeary, Vice-Chair Wilkins, and members of the Committee, Nareit thanks you for this opportunity to provide written testimony in opposition to H.B. 337, legislation that would eliminate the "dividends paid deduction" (DPD) for all real estate investment trusts (REITs) contrary to federal income tax rules and the existing laws of virtually every other state with an income-based tax system. Over 114 REITs own and operate almost 3,000 Maryland properties valued at approximately $55 billion, including vital community assets such as Bethesda Row, Pike & Rose, T. Rowe Price's global headquarters, the Shady Grove Bio+Tech Campus, White Marsh Plaza, the Clarksburg and Hagerstown Premium Outlets, the Alexandria Technology Center-Gaithersburg, Tanger Outlets National Harbor, the Gaylord National, the Westfield Annapolis, the University of Maryland BioPark I and II, the Columbia Medical Campus I and II, as well as thousands of apartments, community shopping centers, cell towers, self-storage facilities, medical office buildings, senior housing facilities, hotels, manufactured home communities, logistics centers, nursing and rehabilitation facilities, and other types of rental properties. Maryland also is the headquarters of the second largest mortgage REIT that helps with the financing of many home loans around the country. Further, eleven publicly traded REITs are headquartered in Maryland, and they employ over a thousand people in Maryland.

Nareit serves as the worldwide representative voice for REITs and real estate companies with an interest in U.S. real estate. Nareit's members are REITs and other real estate companies throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.

Background: Congress created REITs to benefit everyday American investors. Based on the model for mutual funds, Congress created REITs in 1960 to enable investors from all walks of life to own professionally managed, income-producing real estate through companies modeled after mutual funds. REITs are corporations or business trusts that combine the capital of many investors to benefit from a diversified portfolio of income-producing real estate. Federal law requires shares in a REIT to be freely transferable, and REIT shares usually are traded on a major stock exchange.

Unlike other businesses, REITs must be widely held and distribute at least 90% of their taxable income annually. REITs are required to distribute at least 90% of their taxable income annually to their shareholders. In exchange for doing so (and for satisfying a number of other organizational, income and asset-related requirements designed to ensure that they are widely held, long-term investors in real estate), federal law grants REITs (and mutual funds) a dividends paid deduction (DPD). In 2021, REITs distributed more than $92.3 billion to their shareholders. REITs have historically delivered competitive total returns for investors based on high, steady dividend income and long-term capital appreciation. Their comparatively low

correlation with other assets also makes them an excellent portfolio diversifier that helps reduce investors' overall portfolio risk and increases returns.

Virtually every state with a corporate income tax conforms to federal tax law and imposes tax on REIT income at the shareholder level only. Nearly every state with an income-based tax system, including Maryland currently, allows the DPD for public or widely held REITs. As a result of the DPD, most, if not all, of a REIT's income is taxed at one level – the shareholder level – regardless of the state where the REIT owns property. For example, Maryland taxes the dividend income distributed to a Maryland resident by a New York-based REIT that owns property only in New York, Connecticut, and New Jersey – and New York taxes the dividend income of a New York resident distributed by a Maryland-based REIT with only Maryland properties.

REITs benefit Maryland. The Maryland real estate owned by REITs generated $480 million dollars in property taxes in 2021. These taxes are on top of the individual income taxes currently generated by REIT dividends paid to Maryland residents from income earned wherever the distributing REIT resides or does business, as well as the sales and other taxes generated by the tenants that conduct business on the premises owned and operated by REITs. Moreover, in 2022 REITs paid 12% of all property taxes paid in Maryland by the private sector, the highest percentage of any state.

Furthermore, 50% of Maryland households directly or indirectly own REITs through their retirement and investment accounts. Thus, they can benefit from not only the 114 REITs that own properties in Maryland, but the more than 252 REITs owning 535,000 properties valued at $2.6 trillion throughout the U.S.

REITs support the overall U.S. economy by channeling capital into–and increasing the transparency, liquidity, and stability of–the markets.

- **REITs provide economic stability**. In the past two economic crises, REITs have been a stabilizing force and have facilitated the recapitalization of the real estate market.
- **REITs help create jobs**. In 2021, REITs supported an estimated 3.2 million jobs and $229 billion in labor income.
- **REITs support essential services**. In 2021, REITs paid nearly $22.5 billion in state and local property taxes (including the $380 million to Maryland noted above) that helped to pay the salaries of police, firefighters, teachers, and other essential state and local employees.
- **REITs reinvest in communities**. In 2021, REITs spent $107.5 billion in routine capital expenditures to maintain existing property and to support new construction. By law, REITs cannot "flip" properties, but must be long-term holders of real estate.
- **REITs are a model for real estate investment globally**. Today, 41 other countries and regions, including all the G-7 countries, have adopted the U.S. approach to REITs. Nearly 5 billion people worldwide live in countries that have enacted REITs.

Maryland already limited its REIT statute to so-called "captive REITs" in 2007. In 2007, Nareit supported legislation adopted by the State of Maryland that limited any inappropriate use of REITs by denying the DPD for "captive REITs" (generally, REITs more than 50% held by taxable, non-REIT "C" corporations). Shortly thereafter, the Multistate Tax Commission adopted model captive REIT legislation in 2008 and in 2011, which Nareit also supported. Several states followed suit and adopted this or a variation of this model statute.

Denying the DPD in Maryland would cause REITs to invest in other states. Since virtually all other states with an income tax conform to the federal REIT tax rules and allow a DPD for state income tax purposes, the return on a REIT's investment in Maryland would be less than in these other states and therefore future investments would likely be diverted away from Maryland, thereby causing job losses and negatively impacting property taxes.

Nareit opposes H.B. 337 for the following reasons:

- **H.B. 337 would violate comity principles among the States.** H.B. 337 would enact a serious policy change that would put Maryland at odds with virtually all other states regarding the taxation of REIT income at the shareholder level only based on the state of shareholder residence.

- **H.B. 337 ignores REIT requirements that other corporations don't have to satisfy.** H.B. 337 appears to assume that REITs operate just like other real estate companies without recognizing the asset, income, compliance and 90% distribution requirements placed on REITs that other companies need not satisfy. If enacted, Maryland REITs still would need to meet these requirements while other businesses would not.

- **H.B. 337 would decrease needed investments in Maryland**. REITs would invest instead in the rest of the United States that conforms to the federal REIT rules.

In conclusion, Nareit urges the Committee to remove H.B.337's proposed: 1) subsection (m) to Section 10-204 of Md. Code Ann. Tax - General (lines 22-24 on page 4 of H.B. 337, as originally filed), and 2) subsection (d)(7) of Section 10-305 of Md. Code Ann. Tax-General (lines 14-15 of p. 5 of H.B. 337, as original filed) relating to REITs. Nareit thanks you for this opportunity to provide this testimony and wishes to express its willingness to provide any additional information that the Committee may require.

If you would like to discuss this statement, please reach out to Camille Fesche cfesche@rwllaw.com or Mike Johansen mjohansen@rwllaw.com. In addition to email, they can be reached at 410-269-5066.